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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6791/2021 & CM APPLs. 21394-21396/2021

CORE DIAGNOSTICS PRIVATE LIMITED Petitioner

Through Mr. Gagan Kumar, Advocate

versus

NATIONAL E ASSESSMENT CENTRE

NEW DELHI

..... Respondent

Through Mr. Kunal Sharma, Advocate

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Date of Decision: 20th July, 2021.**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE NAVIN CHAWLA****MANMOHAN, J. (Oral)**

1. The hearing has been conducted through video conferencing.
2. Present writ petition has been filed challenging the order dated 23rd April 2021 for the Assessment Year 2018-2019, the demand notice and the notice initiating penalty proceedings.
3. Learned counsel for the Petitioner states that the Respondent issued a show-cause notice purported to be a Draft Assessment Order dated 23rd February 2021. He states that on a bare reading of the said show cause notice, it is apparent that the Respondent has asked further questions and therefore the same can, at best, be regarded as a notice under Section 142(1)

of the Act. He states that this becomes clear since the impugned notice does not indicate the amount proposed to be disallowed by the Respondent, which is the primary and essential condition for making the draft order. He lastly submits that the impugned assessment order has been passed without considering the reply filed by the Petitioner.

4. With the assistance of learned counsel for parties, we have perused the Draft Assessment Order. This Court is of the view that the impugned draft assessment order specifically states that certain losses and expenditures were either not admissible or not genuine or not verifiable. The relevant portion of the said draft assessment order is reproduced hereinbelow:-

“3. During the year under consideration the assessee filed his revised return of income for A.Y. 2018-19 electronically on 29/11/2018 declaring therein a total income of Rs. NIL claiming refund of RS.71,95,010/-. During the year under consideration assessee was engaged in providing Diagnostic services.

4. On close perusal of records available on record are duly considered. On going through the reply, the below mentioned issues are to be taken for the purpose of making addition to the income of the assessee during the year:

During the year under consideration Assessee has claimed current year loss amounting to Rs.149822751/- and claimed refund of Rs. 7195009/- towards TDS.

After observing the nature of business of the assessee and relying on the findings of the audit report that is as below:

.....On the basis of examination of books of accounts and other relevant documents/evidence, the following expenditures which are covered under the various IT sections as mentioned against each claim, that are not

admissible, even though claimed by the assessee during the year. It is found that you have made payments to persons specified under section 40A(2)(b) amounting to Rs.5199267/- and paid Rs.1936009/- as payment towards gratuity and that is not allowable under section 40A (7). and Rs.1410763/- paid by you that is not allowable under section 40A(9).

- 5. You have made payments of Rs.28998/- under section 40A(3) It is found from the record submitted by you that from the closing stock sheet given to the auditor there are 3 items that are having negative stock of 48124 RXN valuing Rs-341344/- so negative value of the stock has been included in the closing stock and it was observed that stock were not maintained properly.*
- 6. You have imported assets and has been loss on account of change in foreign currency amounting Rs.193121/- which should have been capitalised as per the provisions of section 43A of the ITAct1961 and there should have been accordingly increase in the income.*
- 7. During the year you have purchased furniture's and fitting amounting to Rs.10886667/- plant and machinery amounting to Rs.29639829/- plus Rs.1414983/- and intangible assets of Rs.169278/- , No bills and vouchers are available on record to substantiate its claim.*

In addition to that you have claimed expenses in respect of repairs to buildings amounting to Rs.24,24,628/- And repairs to plant and machinery or furniture amounting to 10,50,8695/- .

However as per rent agreement point no. 9.4 read as below

“..... That it is agreed, declared and confirmed by and between the parties here to that the Lessor shall appoint a reputed maintenance agency (i.es)(hereinafter referred to as

the ‘‘maintenance Agency’’) at the cost of the Lessee, towards the overall maintenance of the scheduled Premises, air conditioning plant(s), DG Sets etc. It is further agreed, declared confirmed that the Lessee shall pay to the Maintenance Agency/Lessor the proportionate maintenance charges, with respect to the said Scheduled Premises, as determined any payable towards common outgoing such as maintenance of sanitary conditions, fire-fighting equipments, expenses for security staff, plumbers, electricians, air-conditioning operators, lift operators, gardeners, including the operation of diesel generating sets for power pack-up and its maintenance, compound repairs, annual maintenance contracts (of DG Sets, airconditioning plants, lifts, etc). all risk comprehensive insurances (of building, DG sets, air-conditioning plants, furnishing, fixtures, et), maintenance of the aforesaid Scheduled Premises & external house keeping, etc. Any mandatory approval, permission sanction required from the local authorities for the purpose of functioning of Lessee’s operational activities shall be within the scope of maintenance and the charges thereof (if any) shall from a part of the maintenance charges. The Lessor will keep a record of the actual expenditures incurred under all heads of maintenances.

The Lessee will pay to the Lessor proportionate charges on the basis of the actual cost +20%. Current maintenance charges are Rs.13.50/- per sq ft super area Per month and shall be revised in accordance with any change in the actual cost of maintenance.

The Lessee has the option to engage an independent agency as regards to internal housekeeping, security and maintenance of their own equipments on the space leased to them on the 6th floor.....’’

8. *In view of the of rent agreement that was made in May 2017, it is very surprising that assessee had started putting plant and machinery in the month of April 2017 which were*

duly claimed by him in his submissions and also claimed expenses in respect of repairs to buildings amounting to Rs.24,24,628/- And repairs to plant and machinery or furniture amounting to 10,50,8695/- During the year you have provided service to your associated enterprise i.e Cellmax Taiwan Co. Ltd. for Lab Charges paid to Rs.2772264/- under section 92C(1). No bills and vouchers were produced in this regard and the nature of exact expense is also not known.

- 9. You have claimed sales promotions of Rs. 19,41,2700/-, These huge expenses cannot be considered as true expenses in view of the nature of business of the assessee where it has been engaged into since long there is no clarity of the various platforms where the sales promotion were made in view to advertise and to expand its business.*
- 10. There is no transparency on the basis on which the return of income for AY 18-19 was filed by the assessee declaring current year loss amounting to Rs.149822751/- and claimed refund of Rs. 7195009/- towards TDS. Assessee is unable to reconcile the quantities handled by it as between purchases and sales subject to adjustment as between opening and closing stocks as pointed out in the audit report, hence the accounts maintain by the assessee are to be taken as unproved in view of the various discrepancies and non maintenance of bill/vouchers for majority of the expenditure which are themselves unreliable or otherwise not capable of proving assessee's income/expenditure.*
- 11. The income returned i.e. loss is ridiculously low as compared to the turnover and expenditure claimed by the assessee and the extent of the business carried on by the assessee. It leads to the conclusion that the account books and the particulars therein are not reliable. It is not only related to a defect in stock register technically, as discussed on various above paras but also about the genuineness of the expenditures claimed by the assessee , there is no mere*

presumption but all the material available on record stood condemned and not acceptable. It is strange that assessee company is having loss in its business and has the huge money for spending it on advertisement amounting to Rs.1,94,12,700/-. Sales are not verifiable amounting to Rs.206316190/- And expenses are also not forthcoming and the income returned was gone to loss as compared to the expenditure occurred by the assessee. In these circumstances, there is a strong probability that in the previous year's also assessee company has been indulged in these types of modus operandi to carry its business activities which needs to be verified. Assessee had paid interest amounting To Rs.6223636/- for which it has not filed any details of the entities."

5. This Court is of the opinion that the Draft Assessment Order had put the petitioner to notice as to what will be the additions and deletions. Also the issue raised at the highest in the present writ petition is with regard to interpretation of draft Assessment Order which can certainly be urged and considered in Appeal. In fact, the jurisdiction to interpret the nature of draft Assessment order is vested with the Appellate Authority.

6. This Court is further of the view that the argument that whether the petitioner's response was considered or not would have to be raised before the appellate authority while hearing the appeal and not in writ jurisdiction. The said argument in the present case requires minute examination of the Show Cause Notice as well as the response filed by the petitioner, which is not permissible in writ jurisdiction. Consequently, as the petitioner has alternative efficacious remedy, present matter need not be entertained in writ jurisdiction. Accordingly, the present writ petition and applications are dismissed.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JULY 20, 2021

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